IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4850 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULABKHAN SUBHANKHAN PATHAN THRO BROTHER-YUSUFKHAN SUBHAN- - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AR SHAIKH for Petitioner(s) : 1,
Mr LR Pujari, Asstt.GOVERNMENT PLEADER for Respondent(s) :

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/12/2007

ORAL JUDGMENT

1. The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction for quashing and setting aside the order dated 2.2.2007 passed by respondent No.2, under section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, 'PASA Act')whereby the petitioner has been detained as a dangerous person within the meaning of section 2(c) of the Act.

2. Heard the learned advocate for the petitioner and the learned AGP for the respondents.

3. From the grounds of detention, it appears that two offences being CR.I.34/2007 and 41 of 2007 under sections 457, 380 of Indian Penal Code were registered against the detenu. The detaining authority has placed reliance on two registered offences and 2 statements of unnamed witnesses. Statements of two witnesses were recorded on 28.1.2007 on which date, the petitioner was in custody. Except these two statements, there is no other material on record which shows that the petitioner is acting in such a manner which is dangerous to the public order.

4. There are number of decisions of this court as well as the Hon'ble Apex Court on the point of relying on the statements of unnamed witnesses in detention

cases. In the case of ***Ahokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat*** (2001 (1) GLH 393), having considered the decision of the Hon'ble Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar*** (AIR 1966 SC 740), this court held that the cases wherein the detention order passed on the basis of the statements of the witnesses falls under the maintenance of “law and order” and not “public order”.

5. Considering the above decision, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding that there is threat to the “public order” and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

6. In the result, this Special Civil Application is allowed. The order of detention dated 2.2.2007 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The detenu is

ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msp